

WILLIAM K. HARRINGTON
United States Trustee for Region 2
One Bowling Green
New York, New York 10004
Telephone: (212) 510-0500
By: Shara Cornell
Trial Attorney

HEARING DATE: March 12, 2024
HEARING TIME: 11:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
	:	Case No. 24-10232 (PB)
In re	:	
	:	(Chapter 11)
IR 96 TH STREET HOLDING, LLC,	:	
	:	
Debtor.	:	
	:	
-----X	:	

PLEASE TAKE NOTICE that upon this Notice of Motion and the accompanying memorandum of law, William K. Harrington, the United States Trustee for Region 2 (the “**United States Trustee**”), will move this Court before the Honorable Philip Bentley, Bankruptcy Judge, in the United States Bankruptcy Court, One Bowling Green, New York, New York 10004 on **March 12, 2024 at 11:00 a.m.**, or as soon thereafter as counsel can be heard, for an order dismissing this bankruptcy with prejudice, and for such other and further relief as this Court may deem just and proper. The original application is on file with the Clerk of the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE, that the Motion will be heard on **March 12, 2024 at 11:00 a.m.** through the Zoom for Government. Participants in the hearing are required to register their appearance by 4:00 p.m. the day before the hearing utilizing the e-Court Appearances tool at <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>

PLEASE TAKE FURTHER NOTICE that any responsive papers should be filed with the Court and personally served on the United States Trustee, to the attention of Shara Cornell, Esq., via e-mail at shara.cornell@usdoj.gov no later than three (3) days prior to the return date set

forth above. Such papers shall conform to the Federal Rules of Civil Procedure and identify the party on whose behalf the papers are submitted, the nature of the response, and the basis for such response.

Dated: New York, New York
February 16, 2024

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

By: /s/ Shara C. Cornell
Shara C. Cornell
Trial Attorney
One Bowling Green
New York, New York 10004
Tel. No. (212) 510-0500
Fax. No. (212) 668-2255

To:

IR 96th Street Holding, LLC
275 West 96th St.
Apt. 25F
New York, NY 10025

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Case No. 24-10232 (PB)
IR 96TH STREET HOLDING, LLC, : (Chapter 11)
Debtor. :
-----X

**MEMORANDUM OF LAW OF THE UNITED STATES TRUSTEE
IN SUPPORT OF MOTION FOR AN ORDER DISMISSING THIS CASE**

**TO THE HONORABLE PHILIP BENTLEY,
UNITED STATES BANKRUPTCY JUDGE:**

This memorandum of law is in support of the motion (the “**Motion**”) of William K. Harrington, the United States Trustee for Region 2 (the “**United States Trustee**”), for an order dismissing the case of IR 96th Street Holding, LLC (the “**Debtor**”). In support thereof, the United States Trustee respectfully alleges the following:

INTRODUCTION

“Cause” exists under 11 U.S.C. § 1112(b) to dismiss this bankruptcy case. The Debtor is a corporate entity but has no counsel and filed its chapter 11 bankruptcy petition *pro se*. A corporate debtor cannot proceed without counsel. To date, no retention application has been filed nor has any attorney filed a notice of appearance. Accordingly, cause exists to dismiss or convert this case pursuant to 11 U.S.C. § 1112(b).

FACTS

1. On February 14, 2024, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”).
2. The Debtor continues to control and maintain its assets and operations as a Debtor-

in-Possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. As of the date hereof, no attorney or counsel has filed an appearance.
4. As of the date hereof, no retention application has been filed on behalf of counsel.

ARGUMENT

A. Dismissal or Conversion is Appropriate Under 11 U.S.C. § 1112(b)

Section 1112(b) of the Bankruptcy Code provides that on request of a party in interest, and after notice and a hearing, “the court shall convert a case under [Chapter 11] to a case under chapter 7 or dismiss [it] ..., whichever is in the best interests of creditors and the estate, if the movant establishes cause.” 11 U.S.C. § 1112(b)(1) (emphasis added).

It is well established that a corporation, or other entity, may not appear in courts of the United States unless it is represented by counsel. *See Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993) (stating that “[i]t has been the better part of two centuries ... that a corporation may appear in the federal courts only through licensed counsel”); *see also, Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 22 (2d Cir. 1983) (stating that “a corporation, which is an artificial entity that can only act through agents, cannot proceed *pro se*”). The Second Circuit also has opined that “[s]ince, of necessity, a natural person must represent the corporation in court, we have insisted that that person be an attorney licensed to practice law before our courts.” *Shapiro, Bernstein & Co. v. Continental Record Co.*, 386 F.2d 426, 627 (2d Cir. 1967).

The failure of a chapter 11 corporation to retain counsel is cause for conversion or dismissal pursuant to section 1112(b) of the Bankruptcy Code. *In re Spencer C. Young Invs.*, No. 08-81852, 2009 WL 901654, *3 (Bankr. M.D.N.C. Feb. 4, 2009) (dismissing a *pro se* corporate debtor’s case for, among other reasons, failure to obtain counsel); *In re Child Life, Inc.*, 126 B.R. 51, 52 (Bankr.

N.D. Oh. Mar. 26, 1991) (dismissing a chapter 11 case of a corporate entity because it failed to obtain counsel); *see also, In re A's Inc.*, No. 09-21056-TLM, 2009 WL 3571247,*1-2 (Bankr. D. Idaho Oct. 26, 2009) (ordering corporate debtor to appear through counsel and stating that case will be dismissed if debtor fails to appear with counsel within a two-week period). The Court should dismiss this case because the Debtor has failed to retain counsel as required under applicable law.

B. There are No Unusual Circumstances Establishing that Dismissal is Not in the Best Interests of Creditors and the Estate

Under section 1112(b)(2) of the Bankruptcy Code, after the movant shows cause, the burden shifts to the debtor and other parties in interest to show that there are “unusual circumstances establishing that conversion or dismissal is not in the best interests of creditors and the estate.” 11 U.S.C. § 1112(b)(2).

There are no unusual circumstances in this case that would establish that dismissal is not in the best interests of creditors and the estate. The Debtor has done very little in its case and is not represented by retained counsel. Based on these facts, it is unlikely that the Debtor will be able to confirm a plan.

CONCLUSION

WHEREFORE, the United States Trustee respectfully requests that the Court enter an order dismissing this Chapter 11 case pursuant to 11 U.S.C. § 1112(b), and granting such other and further relief as may be deemed just and proper.

Dated: New York, New York
February 16, 2024

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

By: /s/ Shara C. Cornell
Shara C. Cornell
Trial Attorney
One Bowling Green
New York, New York 10004
Tel. No. (212) 510-0500